
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CENTER FOR EXCELLENCE IN
HIGHER EDUCATION,

Plaintiff,

v.

BETSY DeVOS, et al.,,

Defendants.

ORDER

Case No. 2:16-cv-911-CW

District Judge Clark Waddoups

Before the court is Defendants' Motion to Dismiss this action for lack of subject matter jurisdiction. (Dkt. No. 24.) At the time they filed the motion, Defendants argued that there had not yet been a final agency action. After briefing was complete but before oral argument could be heard, Defendants notified the court that the Department of Education had entered a final administrative decision. (Dkt. No. 30.) The court requested supplemental briefing on the effect of the Defendants' notice. (Dkt. No. 31.)

Both parties have now filed such briefing, in which they advise the court that the pending motion to dismiss is not moot. (Dkt. Nos. 32 & 34.) They further indicate, however, that resolution of the motion to dismiss might not be prudent at this time. Defendants identify two possible alternatives for how the case could proceed: Plaintiff could either file a new petition for review or amend the existing petition. Although Defendants have not argued which alternative is proper, they suggest that the existing petition may be "incurably" premature. Plaintiff argues it should be allowed to supplement the petition, but it has not moved the court for leave to do so.

The court therefore ORDERS that Plaintiff either file a motion for leave to amend or supplement pursuant to Federal Rule of Civil Procedure or advise why the court should not hear and decide the pending motion to dismiss. Plaintiff shall file such a motion or response no later than Monday, May 1, 2017. If Plaintiff files a motion, the Federal Rules of Civil Procedure will govern the briefing schedule. If Plaintiff instead addresses only the motion to dismiss, Defendants will have until and including Monday, May 8, 2017 to reply.

DATED this 17th day of April, 2017.

BY THE COURT:



Clark Waddoups
United States District Judge